

MONTANA LEGISLATIVE HISTORY

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AVAILABLEChapter 70 19 95Bill H _____ S 36 Original bill & history CH. Committee on JudiciaryHearing Date(s) Jan 11 ✓ CJan 13 ✓ C

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Date Out Jan 13 ✓ CS. Committee on JudiciaryHearing Date(s) Jan 31 ✓ CFeb 02 ✓ C

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Feb 03 ✓ CDid this bill originate in an interim committee? Yes No

Committee _____

Report _____

1/20	2ND READING PASSED	50	0
1/21	3RD READING PASSED	46	0
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO TAXATION		
1/31	HEARING		
2/02	COMMITTEE REPORT—BILL CONCURRED		
2/04	2ND READING CONCURRED	94	4
2/06	3RD READING CONCURRED	97	2
	RETURNED TO SENATE		
2/07	SIGNED BY PRESIDENT		
2/07	SIGNED BY SPEAKER		
2/08	TRANSMITTED TO GOVERNOR		
2/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 54		
	EFFECTIVE DATE: 02/09/95		

SB 36 INTRODUCED BY BISHOP
 GENERALLY REVISE LAWS RELATING TO ESTABLISHMENT OF PATERNITY
 OF A CHILD
 BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION
 SERVICES

12/28	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/11	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/17	2ND READING PASSED	49	0
1/18	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/19	FIRST READING		
1/19	REFERRED TO JUDICIARY		
1/31	HEARING		
2/04	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/11	2ND READING CONCURRED AS AMENDED	99	0
2/14	3RD READING CONCURRED	99	0
	RETURNED TO SENATE WITH AMENDMENTS		
2/15	2ND READING AMENDMENTS CONCURRED	50	0
2/16	3RD READING AMENDMENTS CONCURRED	50	0
2/18	SIGNED BY PRESIDENT		
2/18	SIGNED BY SPEAKER		
2/21	TRANSMITTED TO GOVERNOR		
2/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 55		
	EFFECTIVE DATE: 07/01/95		

SB 37 INTRODUCED BY BISHOP
 IMPLEMENT RECOMMENDATION OF GOVERNOR'S TASK FORCE TO
 RENEW MONTANA GOVERNMENT BY SUBMITTING TO QUALIFIED
 ELECTORS OF MONTANA AN AMENDMENT TO ELIMINATE OFFICE OF
 SECRETARY OF STATE AND ASSIGN DUTIES OF THAT OFFICE TO
 LIEUTENANT GOVERNOR

12/29	INTRODUCED
1/02	FIRST READING
1/02	REFERRED TO STATE ADMINISTRATION
1/14	FISCAL NOTE REQUESTED
1/17	FISCAL NOTE RECEIVED

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on January 11, 1995,
at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 36, SB 69
Executive Action: SB 36

HEARING ON SB 36

Opening Statement by Sponsor:

SENATOR AL BISHOP, Senate District 9, Billings, presented SB 36 which was introduced at the request of the Child Support Enforcement Division of the Department of Social and Rehabilitation Services. The reason for the bill is that the Division is tied closely to federal funding and the Federal Omnibus Budget Reconciliation Act of 1993 amended a portion of the Social Security Act. Montana has in place most of the law that is required but some small changes are needed. If this legislation is not passed, it will result in the loss of some

federal monies. This legislation benefits both children and parents because it expedites and finalizes the question of paternity which is the first thing necessary in a child support enforcement proceeding. This bill sets out the way to accomplish that and it also provides for notifying the parents of their rights and responsibilities.

Proponents' Testimony:

Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator, presented her written testimony, EXHIBIT 1. She handed out information on genetic testing and also a paternity glossary. EXHIBIT 2. This bill is required to conform with the federal OBRA law and finalizes paternity for the child, which is the first step for child support. The amendments to the bill make the effective date July 1, 1995, which is required by OBRA. The amendments also clarify that both the child's mother and the child's father need to acknowledge on one form that the father is the father of the child. Also in the amendment the word paternity is substituted for parentage in the hospital paternity acknowledgement process.

Laurie Koutnik, Executive Director of Christian Coalition of Montana, said the Coalition supports SB 36 and feels it is timely in view of the desire of citizens of this state to see a crackdown on deadbeat fathers.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked Amy Pfeiffer, Social and Rehab Services, to clarify page 2, line 1, "weightier considerations of policy and logic controls". Ms. Pfeiffer explained that the phrase came from the Uniform Parentage Act. Their Division has seen more and more instances in which there are two conflicting presumptions of paternity. The first part of Section 1, (5) states that if there are conflicting presumptions, the one based on a blood test would outweigh the other one. However, when there are conflicting presumptions not based on blood tests, the Division does not think it is appropriate for them to rank which presumptions were more important and wants to leave that decision to be left to a judge or hearing officer. SENATOR HALLIGAN asked when using blood testing, who pays for the blood testing? Ms. Pfeiffer stated that when their department establishes paternity, they have a contracted lab which they use. The Division asks the hearing officer to order that the alleged father pay for the blood test if he is found to be the father. If it is a Title IV-D case and it is necessary for the Division to establish paternity, blood tests may be offered or the hearing officer may order them. In a private case in District Court, the Court decides who pays for the blood test if one is necessary.

SENATOR RIC HOLDEN stated he is generally supportive of this legislation, however, he questioned the situation wherein the father voluntarily signs the acknowledgement and later questions his paternity. Ms. Wellbank commented that at the time of the birth the hospital gives the father a pamphlet explaining his rights and responsibilities before signing. Ms. Pfeiffer stated that this bill does not change the above situation. If someone signs an acknowledgement of paternity they are presumed to be the father and the Division can act on that presumption until the father brings an action in District Court asking the Court to determine that he is not the father.

SENATOR SUE BARTLETT remarked that it was her understanding that the Division has provided training to hospital personnel regarding the acknowledgement of paternity forms. Ms. Wellbank maintained that they had provided very intensive training to the hospitals and the forms were all written in simple and clear language.

SENATOR LORENTS GROSFIELD asked for clarification of lines 18 through 21 on page 9. His understanding is that if there is only one alleged father and he refuses to submit to a blood test, the court designates that he is the father. What is the procedure when there is more than one alleged father and they all refuse to submit to a blood test? Ms. Pfeiffer stated that when the mother alleges there is more than one possibility, the Court may be able to proceed against one of them. One or more of the alleged fathers may not live in this state thus they may not have jurisdiction over one or more of the alleged fathers. The Court or the Division's administrative process could proceed against one of them at a time asking the alleged father to submit to a blood test or go through the level of proof necessary to have a hearing officer or a judge order a blood test. If the first person failed to appear, that default could not be entered if there are other possible people out there because there would be the possibility of ending up with two or three defaults and this would mean two or three fathers by default. The Division continues to try to find the other alleged fathers. SENATOR GROSFIELD further questioned the situation wherein both alleged fathers were local and both refused to submit to a blood test. Ms. Pfeiffer stated they would not be able to take default against either one.

CHAIRMAN BRUCE CRIPPEN asked SENATOR HALLIGAN if an order to show cause could be issued. SENATOR HALLIGAN stated the Division could have the alleged fathers show cause as to why they are not appearing on the order and then issue a contempt. Ms. Pfeiffer stated they can have a contempt issued, however, if the fathers continue to ignore them, this provision would prevent the Division from issuing a default against one of the alleged fathers. SENATOR HALLIGAN questioned whether there would be a way to work with other jurisdictions when an individual does not respond at all. Ms. Pfeiffer stated that when two people continue to ignore all their orders, this provision would

prohibit them from entering a default against either one of the alleged fathers. Ms. Pfeiffer said they are usually able to talk one of the alleged fathers into a blood test because he thinks he is not the father. If the Division can get one excluded, they can enter default against the other.

SENATOR GROSFIELD referenced the phrase "95% or higher statistical probability of paternity" and asked whether the natural father would always show in the 95% or higher statistical probability by blood test. If a thousand people with the same blood type took a blood test, how many of those would show a 95% or higher statistical probability of paternity. Ms. Pfeiffer commented that the hand out distributed earlier (EXHIBIT 2) explained paternity testing. They use human leukocyte antigens (HLA) testing or DNA. It is a cross matching of a number of tests. Most of the tests come back 98% to 99.8% or excluded. After the blood test has come in, the alleged fathers can ask to have their case referred back to District Court.

SENATOR GROSFIELD asked for clarification of the strikeout of the words "by rule" on page 11, line 7. Ms. Wellbank stated the maximum they are allowed by federal formula to reimburse hospitals is \$20 for each paternity acknowledgement. The Division did not feel a rule was necessary.

SENATOR SHARON ESTRADA asked whether there is retroactive action when it takes a long time to establish paternity. Ms. Pfeiffer said the Court can go back to the time of birth to include birth costs. The Court uses the Child Support Guidelines and looks at what the father's income would have been during that time.

Closing by Sponsor:

SENATOR BISHOP offered no further remarks in closing.

{Tape: 1; Side: A; Approx. Counter: 43.8}

HEARING ON SB 69

Opening Statement by Sponsor:

SENATOR HOLDEN, Senate District 1, presented SB 69, which is an act relating to military justice. The Montana Department of Military Affairs currently adopts by reference federal laws, regulations, forms, precedents and usages governing the Armed Forces of the United States and has been doing so since 1974. This bill will bring the adoption of the Uniform Code of Military Justice in line with today's circumstances.

Proponents' Testimony:

Brigadier General Gary Hindoi, Assistant Adjutant General for

Montana under Title 32, they would be subject to the code of military justice for the State of Montana. SENATOR JABS further asked about the jurisdiction while overseas. Lt. Col. McCabe explained that the rules in effect for out of the continent travel for purposes of national guard duty are covered by Title 10. If a member commits any offense that would be subject to the Code of Military Justice, they would be prosecuted by the federal authorities under Title 10 status.

SENATOR LARRY BAER asked Sgt. Roger Hagan if his organization represented the consensus of the enlisted personnel. Sgt. Roger Hagan stated that all members of the enlisted force of the national guard of Montana are members of their association.

SENATOR CRIPPEN questioned what would happen under a Title 32 status if a felony was committed. Lt. Col. McCabe explained that the UCMJ on the federal side is established to protect soldiers from enforcement of state laws against active duty federal soldiers who may be in a state. In Montana, it is their policy that if there is a violation of a criminal code of the state of Montana by a guardsman, they will seek to have that prosecuted through the appropriate State District Court and then deal with that soldier militarily in the administrative matter which follows.

SENATOR GROSFIELD expressed concern that the way the bill is drafted, subsection 2, lines 21 through 28, is the only subsection which is affected by the effective date of this act and an additional amendment might be needed. Lt. Col. McCabe said they would certainly accept that clarification.

Closing by Sponsor:

SENATOR HOLDEN said it is timely that this bill be passed with the proper amendments to help define and clarify the military court system here in Montana.

EXECUTIVE ACTION ON SB 36

Motion/Vote: SENATOR BISHOP moved to AMEND SB 36. EXHIBIT 4
The motion to AMEND SB 36 CARRIED UNANIMOUSLY.

Motion: SENATOR BISHOP moved SB 36 DO PASS AS AMENDED.

Discussion: SENATOR GROSFIELD questioned the phrase "weightier considerations of policy and logic", page 2, lines 1 through 2. Ms. Pfeiffer explained that they felt a need for some kind of standard. This phrase refers to the standard the court or hearing officer would use. The judge or the hearing officer would have to decide when given the facts of those particular families and the child's relationship with the possible fathers, what does the court consider as the weightier consideration of public

policy. SENATOR GROSFIELD felt that this language says that the policies the legislature has passed are not clear and the judge is to set the policy. SENATOR BARTLETT questioned whether the judges would understand what is meant by the phrase since it is not a commonly used phrase. Ms. Pfeiffer felt that many of them would look at the case law and try to figure out what public policy would be for this child. They are asking the court to weigh policy and logic.

SENATOR LARRY BAER stated that there is a substantial difference between law and policy. The legislature establishes the law. Is that law going to be subject to certain policy or is the policy going to be subject to the law. VALENCIA LANE explained that when the word policy is used it means policy that has been adopted by the legislature in statute. The presumptions referred to are set out in statute. On page 2, line 1 the policy they are talking about is statutory policies established by the legislature. You can have legislative policy or statutory policy. The problem is delegation of legislative authority to adopt policy.

{Tape: 2; Side: A}

Ms. Pfeiffer said they could add the word statute, however, there is no statutory policy ranking presumptions. SENATOR BARTLETT asked if it would be possible to delete the sentence. The direction to the courts would be that a presumption based on paternity blood test is the most significant presumption and would bear out over other presumptions. The second sentence was added so that the legislature could give some guidance to the courts about what they should look to in deciding between different presumptions. Ms. Pfeiffer said that would be fine. In Section 5, both those sentences are not part of the mandates of the OBRA. The first sentence would give some direction and they could do without the second sentence.

CHAIRMAN CRIPPEN stated that the suggestion was that they strike the language after the word presumptions on line 30, page 1, through line 2, page 2. Ms. Pfeiffer said that was correct. CHAIRMAN CRIPPEN further stated that on page 8, lines 23 starting with the word "If" strike the remainder of line 23 and all of 24 and 25.

Withdrawal of Motion: SENATOR BISHOP withdrew the motion SB 36 DO PASS AS AMENDED.

Motion: SENATOR BARTLETT moved to AMEND SB 36 by striking the language "if there are conflicting presumptions not based on paternity blood testing, the presumption that is factually founded on weightier considerations of policy and logic controls" and the two sections of the bill in which that currently appears.

Discussion: SENATOR JABS stated that the above amendment would then base everything on a blood test. SENATOR BARTLETT said that would be true only in those cases where a blood test has been performed and provides a sufficient basis to presume paternity. The effect of the amendment leaves us with no statutory guidance to the courts in terms of what would be weightier evidence to consider when there is no blood test. Where there is a blood test and the results of that are sufficient to presume paternity, 95% or greater, that is the standard to be used to establish paternity.

SENATOR GROSFIELD felt that there is still the issue of whether the legislature should be setting a policy of the state. He asked if the Department would consider bringing in a short summary of the presumptions that are in the law so the committee could decide if they want to set some priorities.

Withdrawal of Motion: SENATOR BARTLETT withdrew the motion to AMEND SB 36.

DATE _____

1/11/95

SEN:1995
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DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

11/11/95
36

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Senate Bill 36
"OBRA Paternity"
Sponsored by Senator Al Bishop
Testimony of Mary Ann Wellbank
SRS Child Support Enforcement Division Administrator



This bill deals with the state's paternity establishment process.

Title IV-D of the Social Security Act, 42 USC 651 et seq. creates the federal/state child support enforcement program. In return for federal public assistance funds, Title IV-D mandates that states pass specific laws providing for the establishment of paternity, child support and health insurance obligations, and for the enforcement of these obligations.

The federal Omnibus Budget Reconciliation Act of 1993 (OBRA 93), amended 42 USC 666 to require states to adopt some new paternity legislation. Fortunately, much of Montana's administrative paternity process and our in-hospital paternity acknowledgement program meet the requirements of OBRA 93 but some changes must be made to our administrative process and to the Uniform Parentage Act, 40-6-1-1 et seq., to comply with the requirement. The failure to adopt such legislation this session subjects the CSERD to loss of the federal funding program which supports our program as well as the state welfare program.

The importance of this legislation is that it tightens up and finalizes the paternity establishment process. In Montana alone, 3,000 or around 27% of all children are born out of wedlock. This means that paternity needs to be established for those children to ensure they have access to their birthright - of knowing who their father is, of paternal medical history and medical conditions that may affect them, and of having rights to benefits the father may be eligible for (social security, veterans), and of course, being eligible for child support.

The very first step in gaining child support for a child is establishing paternity. Many single-parent children are receiving welfare and medicaid benefits from the state. Once paternity and a child support obligation are established, many children begin receiving support and either no longer need welfare benefits, or the money collected is used to partially or fully reimburse the state and federal governments for welfare benefits paid. The paternity establishment aspect of child support enforcement is one

of the cornerstones of welfare reform. As a result of last session's legislation, the CSED established an in-hospital paternity acknowledgement program which is projected to result in voluntary acknowledgements of 50% of Montana's out of wedlock births.

Just to give you a brief summary of the principals under which Montana establishes paternity:

MCA 40-6-105 (page 7, section 7)

Paternity is **presumed** or a presumption of paternity exists when:

- the child is conceived or born during marriage (or attempted marriage) or within 300 days of the termination of the marriage
- the child's natural mother and the man have attempted to marry after the child's birth
- the man holds himself out to be the child's natural father
- the natural mother and father legally and formally acknowledge paternity in writing. Montana has in-hospital paternity establishment program allowing them to do so at time of child's birth.
- if the scientific evidence from a blood test shows a 95% or higher statistical probability of paternity.

There are three major parts of this legislation. Sections 1-5 deal with Montana's administrative process where the CSED establishes paternity for all state welfare cases and for others who apply for state services. Sections 6-10 deal with the Uniform Parentage Act in which courts establish paternity. Our goal is to make these two processes consistent with eachother as well as to comply with OBRA. The last section 11 is in the code used by the Department of Health. It represents clean-up from last session's legislation.

The necessary changes resulting from OBRA include:

- 1) a requirement that CSED provide the parents information regarding the rights and responsibilities of acknowledging paternity as part of a voluntary acknowledgement of paternity;
- 2) a requirement that full faith and credit be given to a determination of paternity made by any other state, whether established by voluntary acknowledgement or established by administrative or judicial process;

At present, some states, such as Montana, may establish paternity by administrative, rather than judicial process. In many, but not all states, a parent or state agency is entitled to rely on a presumption of paternity created by statute to establish a child support obligation. This is true until the presumption is rebutted in an appropriate action. Since not all states have the same law in this area, one state may establish a paternity order, and a child support order based

on the paternity order, and the paternity determination may not be recognized by another state, requiring the parents to re-litigate the issue. The full faith and credit provision will end duplicative paternity adjudications.

- 3) a requirement that a voluntary acknowledgement of paternity must be recognized as a basis for seeking a support order without requiring further proceedings to establish paternity;

In some states, such as Montana, a voluntary acknowledgement of paternity, filed with the Department of Health, Vital Statistics Bureau, creates a presumption of paternity that may be relied upon until that presumption is rebutted in an appropriate action in district court. This is not the law in all states. When this provision is adopted in all states pursuant to the federal requirement, it will reduce the need to have paternity adjudicated in either a court or administrative forum before a support obligation may be created.

- 4) a requirement that an objection to genetic test results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence and that if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

In Montana, this provision is already part of Montana law in the administrative paternity determination process. This provision would extend the principle to paternity actions in district court. It allows the parties to know sufficiently prior to the hearing whether it will be necessary to involve an expert witness from the testing laboratory. It streamlines the proceeding by letting the parties know what issues are in dispute.

- 5) a requirement that genetic testing results indicating a particular threshold probability of paternity establishes a rebuttable or conclusive presumption of paternity (this must be added to the Uniform Parentage Act);

For administrative paternity proceedings in Montana, a 95% probability of paternity based on paternity blood testing, creates a presumption of paternity. There is no similar presumption based on blood tests conducted pursuant to a district court proceeding. Many other states also have created presumptions of paternity based on certain threshold levels of probability. This provision will make uniform the law in Montana, as well as complying with the federal requirement that such a threshold probability of paternity apply to all paternity determinations.

- 6) a requirement that a default paternity order be entered upon a showing of service of process;

This is more of a clarification provision. The CSED, in its administrative paternity process, is authorized to enter default orders upon a showing of proof of service on the alleged father. MCA 40-5-233. The Uniform Parentage Act provisions of Montana law, for paternity actions in district court, don't clearly state that this is the case. OBRA requires that a paternity default order may be entered upon a showing of service of process. For this reason it was necessary to specifically so state in the UPA provisions. Service of process requires notice and an opportunity to appear. Depending upon whether the action is initiated in district court or through an administrative proceeding, and at what stage of the proceeding a party wishes to have a default entered, service of process may require service of a notice or petition by personal service or certified mail, or of a motion for default by regular mail after proper service of the initial pleading.

The CSED has also added other, related provisions to clean up provisions of the current administrative paternity establishment process. These include: a provision establishing priority of presumptions of paternity; a provision allowing the CSED to hold an additional hearing if there is reason to believe a person submitting to blood testing was not the person ordered to appear for testing; and a provision allowing the CSED to enter an order of non-paternity based on a blood test exclusion.

PATERNITY ESTABLISHMENT INFORMATION
CHILD SUPPORT ENFORCEMENT DIVISION
MARY ANN WELLBANK, ADMINISTRATOR
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Background on Genetic Testing

All human cells contain twenty three (23) pairs of chromosomes containing the genetic makeup of that person. A child inherits one-half of his/her chromosomes from each parent. The 23rd gene determines a person's sex, the 6th determines human leukocyte antigens (HLA), and the 9th determines blood type. The genetic lab does red blood cell (RBC) and HLA test systems on all blood samples to identify genetic markers from each person being tested. The lab compares these genetic markers to determine if the genetic markers from the child are a composite of those identified in the mother and the alleged father. The lab requires that more than one test system must be done to accomplish the testing, even though one system could be conclusive. HLA excludes 93.5% of all non-fathers and RBC excludes 63-72% of all non-fathers, and the two combined will exclude 99% on all non-fathers. DNA testing is done if the RBC and HLA do not reveal conclusive results. DNA is done by comparing short sections of DNA called a probe. The child's DNA probes are compared to that of the mother and the alleged father. If these two people are the biological parents of the child, exactly one-half of the child's DNA will exactly match with each of the parents. Two probe systems are run for absolute accuracy. DNA testing excludes 99% of all non-fathers.

The paternity index, shown on the test results, is set by comparing the genetic markers of the alleged father to a random man of the same race and calculating the ratio of the frequency that the random man could produce the same genetic markers. A probability factor of .05% assumes the alleged father and a random man had an equal chance to father the child and is used

in a formula to determine the final percentage of probability that the alleged father is the father of this child. If a blood test result shows a 2000 : 1 probability, the alleged father is 2000 times more likely to be the father of the child than a random man of the same race given access to the same mother.

PATERNITY GLOSSARY

Alleged Father	A man against whom there exists an assertion, declaration, or statement indicating that he may be the father of a child/ren in a case.
Acknowledgment of Paternity	A legal document signed and notarized by both parents of a child and filed with the birth records at the Bureau of Ital Statistics. This document may be challenged in the courts.
Admission of Paternity	An administrative document, signed, notarized, and sworn-to by the alleged father declaring that he is the father of the child named. This document cannot be challenged in the courts.
AFDC	<u>Aid to Families with Dependent Children</u> . Public assistance paid to a custodial party on behalf of children who are deprived of one or both of their parents by death, disability, or a continued absence from the home by a parent including desertion and incarceration.
Amended Birth Certificate	The document that results from adding the father's name to a birth certificate at the request of <u>either</u> parent.
Applicant	The custodial party who requests the services of CSED to determine paternity, establish an order for support, or enforcement of an order for support.
Assignment of Rights	The procedure/document by which a recipient of public assistance or an applicant of NAFDC services agrees to turn over to the State any right to support paid on behalf of such recipient/applicant or their dependent children.
Caretaker/ Custodial Party/ Guardian	A parent, relative, or guardian who maintains care and control of the dependent children of a NAFDC household or whose needs are included with the children's in an AFDC payment or Medicaid benefits.
Certificate of Service/ Sheriff's Return	A signed document by which the person who served process, delivered documents in person, upon a party to the case which affirms that the service was performed.
Certified Birth Record	A document obtained from the state agency responsible for maintaining ital statistics of birth and death records. The record contains birth information for the child, mother's name, and father's name if paternity has been acknowledged. The document bears the signature of an agency official and seal of certification as to the facts.

Certify	To declare, under oath, the accuracy of facts by a signed, written statement.
Child	Any person under 18 years of age who is not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States, any person under 19 years of age and still in high school or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday. [MCA 40-5-201 (2)(a)]
Circumstantial Evidence	Evidence directed to the surrounding events, whereby which existence of the principal fact in an issue may be inferred by logical reasoning.
Cite	A statute, ordinance, or judicial opinion identified by section, volume, or page numbers, and code of the source.
Code	A collection of federal or state laws published in one or more volumes.
Collateral Facts	Facts outside of or not directly connected with the principal matter in dispute.
Continuance	The postponement of a hearing to a different day.
Cooperation	An applicant's observance of the conditions of application or service by any State agency.
Cross-examination	The questioning of a witness by the opposing party for the purpose of testing the truth of the testimony.
CSED	<u>Child Support Enforcement Division</u>
Default	The failure of a party to a case to respond to legal process within the time-period prescribed by law for that response.
Dependent Child	Child under the age of emancipation or receiving assistance via AFDC.
Discovery	The disclosure of facts, documents, witnesses or other information in the possession of one parties in an adversarial action to the other party prior to formal hearings procedures.
Due Process of Law	The observance of legal rules and procedures to protect the rights of all parties to a legal action.
Emancipation	To release from parental care and responsibility via reaching the legal age of emancipation in a state, marriage, entry to military service, death, or by court order.
Et Al	Latin abbreviation for "and others".

Et Seq.	Latin abbreviation for "and the following".
Ex Parte	Something that is done for the benefit of one party only and improperly excluding others to the same action.
Exhibit	A document or article of fact, marked for identification, submitted to the court or to the hearings officer to support the argument of a party to a legal action.
(Title) I-A	of the Social Security Act covering public assistance programs under Federal Law.
(Title) I-D	of the Social Security Act covering support enforcement programs under Federal Law.
Grant Amount	The amount of public assistance paid to an AFDC family in a given month.
Guardian Ad Litem	A guardian appointed by a court to protect the legal interests of a minor or otherwise incapacitated person.
Hearings Officer Administrative Law Judge	An impartial person authorized by the agency to hear evidence and render decisions regarding proper application of policy and procedure.
Inadmissable	A term to describe evidence or testimony that cannot be considered by a judge or hearings officer under established legal procedures.
Incarceration	Imprisonment; not including County Jails.
Informational Birth Record	An uncertified document containing birth information for a child. Sometimes this is a document issued by the hospital "suitable for framing" and other times this is a copy of the documents submitted by the hospital to the Bureau of vital Statistics. This is not a legal document, but does provide valuable information regarding the birth records of a child.
Informed Consent	An administrative document signed by an alleged father by which he acknowledges that he is signing an Admission of Paternity fully aware of additional possible fathers.
Initiating State	The state in which the custodial party resides when the alleged father resides in another and interstate actions are required.
Interrogatories	A set or series of written questions to assist in discovery prior to a hearing.
Judgment	The official decision of findings of a court; a decree.

Judicial Review	Appeal to a court of higher authority for the review of the judgment of an administrative agency.
Jurisdiction	The determination by law prescribing the class of cases which may be heard by a legal entity including a specific geographical area and the parties which may be included in an action.
Legal Father	A man who is recognized by law as the parent of a child.
MCA	Montana Code Annotated, Montana laws. Title 40 and Title 41 specifically govern the actions of CSED and define its authority.
Medicaid	Medical benefits related to AFDC benefits or to NAFDC persons who are eligible.
Motion	An application to a judge or hearings officer for an order or ruling.
Non-AFDC/NAFDC	I-D cases in which the custodial party is not a recipient of public assistance.
Notarize	The administration of an oath to a person, a Notary Public, who then attests and certifies by his or her signature and official seal on the document that the person who signed the document was the person named on the document.
Objection	The act of a party who disagrees to something or proceeding in the course of a hearing.
Opening Statement	The statement made as an overview at the beginning of a hearing setting forth the purpose and the facts to be covered.
Order	The decision rendered in writing by the judge or hearings officer.
Paternity	Fatherhood.
Paternity Affidavit	An administrative document, completed by the custodial party, containing declarations and statements regarding the circumstances of conception and the relationship as it existed between the biological parents of the child. This document is completed voluntarily, signed and sworn-to before a notary.
Personal Service	Delivery of a notice of document to a named party to an action by handing it to him/her in person.
Precedent	An judgment or decision that serves as an example or authority for an identical or similar case or question of law.

Stay	An order by the court to stop a legal proceeding.
Stipulation	An agreement between parties, done in writing, to validate agreement upon facts.
Subject Matter Jurisdiction	Jurisdiction to proceed with actions against a specific class of case. (example: Native Americans)
Subpoena	The legal process to order cooperation of a witness to appear.
Subpoena Duces Tecum	The legal process to order presentation of documents.
Substitute Birth	The document requested, by a submitting a Certificate Paternity Consent Order, when scientific evidence and/or an administrative or court order requires the information on the birth certificate be changed.
SYSTEM/SEARCHS	The CSED computerized record keeping system.
TEAMS	The computerized record keeping system used by the I-A/welfare agency.
Wavier	The intentional and voluntary relin. of a known legal right.

Pre-hearing Conference	A telephone conference call including the Hearings office, the CSED, and the alleged father to inform the alleged father of his rights and the format of the hearing; to obtain a list of necessary witnesses; set deadlines for discovery and submitting of exhibits; and, to set a hearing date.
Probable/ Reasonable Cause	Facts exist which would induce a reasonable person to believe that an event did occur as alleged.
Pro Se	A person legal representation of his own interests in a hearing without benefit of a lawyer by his/her own choosing.
Presumed Father	A man who was married to the mother at the time the child was born or who meets criteria of presumption as defined under the law. MCA 40-6-105.
Publication/ Decree by Publication	Service has been accomplished by printing of the notification of a legal action in a local newspaper in the area of last known address of the alleged or presumed father. Does not establish paternity.
Rebut	New evidence can be introduced to contradict prior facts or evidence.
Recipient	The person receiving public assistance.
Redirect	The re-questioning of a witness.
Regulation	The rules of an administrative agency.
Release	The relinquishment of a right.
Relevance	A determination that evidence or testimony bears a direct relationship to an issue and proves a fact.
Reporter	A publication that contains judicial opinions.
Responding State	The state in which the alleged father resides if different from that in which the custodial party lies in an interstate action.
Security Copy	A copy of a letter or official document retained in the case-file and stamped as a "copy". Such documents are used as exhibits in administrative hearings and in District Court by way of a Subpoena Duces Tecum.
Statutes	Formal written law found in code books.
Statute of Limitations	Under the law, sets the period of time within which a legal action can take place.

Amendments to Senate Bill No. 36 EXH NO 36
First Reading Copy (white)Requested by Senator Bishop
For the Committee on JudiciaryPrepared by Valencia Lane
(at request of SRS)
January 11, 19951. Title, line 6.
Strike: "AND"2. Title, line 8.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"3. Page 7, line 22.
Following: "he"
Strike: "the person has acknowledged"
Insert: "the child's mother and the child's alleged father have
acknowledged the alleged father's"4. Page 8, line 3.
Following: "he"
Strike: "the person acknowledges"
Insert: "the child's mother and the child's alleged father
acknowledge the alleged father's"5. Page 11, line 1.
Strike: "parentage"
Insert: "paternity"6. Page 11, line 3.
Strike: "parentage"
Insert: "paternity"7. Page 11, line 12.
Insert: "NEW SECTION. Section 12. {standard} Effective date.
[This act] is effective July 1, 1995."

DATE 1/11/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 36

SB 69

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Chip Erdmann	MT Air Nat Guard	SB 69	X AS Amended	
GARY HINDOEN	MT ANG	SB 69	X AS Amended	
JAMES TAFLAN	MT ANG	SB 69	X Amended	
MIKE MCCALL	MT ANG	SB 65	Amended	
Mary Ann Nellmark	SRS - CSED	SB 36	✓	
ROGER A HAGAN	NATIONAL GUARD ENLISTED/OFFICER ASSC.	SB 69	✓ as amended	
Laurie Kestrick	Christian Coalition of MT	SB 36	✓	
Kate Cholewa	MT Womens Lobby	SB 36	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

crimes. If you looked at people convicted twice separately of any violent crime, not limited to the offenses in SB 66, there were 20 or 30.

{Tape: 2; Side: A}

Closing by Sponsor:

The person SB 66 addresses has to be convicted by a jury of their peers a second time. This bill wants to protect our children and our grandchildren. Law enforcement endorses the bill.

EXECUTIVE ACTION ON SB 36

Discussion: SENATOR GROSFIELD referenced the handout from SRS listing that four presumptions that are in the law. EXHIBIT 13 Number 4 would become the first priority. The other presumptions are (3) the child's mother and father have acknowledged the father's paternity, (2) the man holds himself out to be the child's natural father and (1) is marriage. The question before the committee is whether they are satisfied with having blood testing showing a 95% or higher statistical probability being the first priority and letting the judge decide amongst the other three or does the committee want to set priorities for the other three. SENATOR BISHOP stated that blood testing is the surest way to determine paternity.

Motion: SENATOR BARTLETT moved to strike the language that starts on page 1, line 29, through line 2, on page 2, all of (5). That would strike the provision that would give a presumption to a blood test. Also on page 8, strike line 22 through 25.
EXHIBIT 14

Discussion: SENATOR HOLDEN felt that the committee would be "gutting" the bill. SENATOR BARTLETT felt that the real part of this bill is in other changes to the existing statutes. SENATOR BISHOP asked Mary Ann Wellbank if the amended bill would put them in compliance with the federal act. Ms. Wellbank said they would still be in compliance. This language does say that blood test presumption has the higher rank of all of the presumptions. To delete that would not harm them in any way. SENATOR BARTLETT stated that in reading the information from the Child Support Enforcement Division and the variety of scenarios that could occur it is much more important to let the triers determine on the facts of the case and what they consider most compelling in each individual case.

Vote: The motion to amend SB 36 CARRIED on oral vote with SENATORS GROSFIELD, HALLIGAN, HOLDEN and NELSON voting "NO".

Motion/Vote: SENATOR BISHOP moved SB 36 DO PASS AS AMENDED. The motion passed unanimously on oral vote.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB36 (first reading copy -- white), respectfully report that SB36 be amended as follows and as so amended do pass.

Signed: *Bruce Crippen*
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 6.

Strike: "AND"

2. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, line 13.

Strike: "presumption --"

4. Page 1, line 29 through page 2, line 2.

Strike: subsection (5) in its entirety

Renumber: subsequent subsections

5. Page 7, line 22.

Following: "he"

Strike: "the person has acknowledged"

Insert: "the child's mother and the child's alleged father have
acknowledged the alleged father's"

6. Page 8, line 3.

Following: "he"

Strike: "the person acknowledges"

Insert: "the child's mother and the child's alleged father
acknowledge the alleged father's"

7. Page 8, lines 22 through 25.

Following: "evidence." on line 22

Strike: remainder of lines 22 through line 25

8. Page 11, line 1.

Strike: "parentage"

Insert: "paternity"

9. Page 11, line 3.

Strike: "parentage"

Insert: "paternity"

 Amd. Coord.

 Sec. of Senate

111436SC.SRF

10. Page 11, line 12.

Insert: "NEW SECTION. Section 12. Effective date. [This act] is
effective July 1, 1995."

-END-

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/13/95 BILL NO. 36 NUMBER

MOTION: Senator Bartlett moved to
amend SB 36.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER	✓	
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA	✓	
LORENTS GROSFIELD		✓
MIKE HALLIGAN		✓
RIC HOLDEN		✓
REINY JABS	✓	
LINDA NELSON		✓

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

SENATE JUDICIARY
EXHIBIT NO. 13
1/13/95
SB 36



MARCRACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

January 12, 1995

TO: Senator Bruce Crippen, Chairman
Senate Judiciary Committee

FROM: Mary Ann Wellbank, Administrator
Child Support Enforcement Division
Department of Social and Rehabilitation Services

RE: SB 36

Thank you for the excellent hearing of SB 36 on January 11.

Senator Grosfield asked the Committee to defer executive action on the bill until such time as the division provides clarification of the new language in Section 40-5-232(5), MCA, which provides in pertinent part,

"If there are conflicting presumptions not based on paternity blood testing, the presumption that is factually founded on the weightier considerations of policy and logic controls."

Summary of Issues

Some members of the committee questioned the intent of the language, specifically with regard to the meaning of "weightier considerations of policy and logic controls." The members expressed concern that the language is unusual, and really gives no guidance to the courts or administrative agency as to the state policy. Members felt that perhaps the Legislature should establish state policy in statute, rather than leaving any discretion to the adjudicating tribunal.

The division responded that the language was adopted from the original recommended language of the Uniform Parentage Act, although the language had not been previously incorporated into Montana's version of the Uniform Parentage Act. The division explained that current statute gives no guidance as to how to resolve conflicts among two equally valid presumptions of paternity. Under present law, it is left to the adjudicating tribunal to make the decision as to which presumption is appropriate given the specific facts of the situation.

The division agreed to provide options as to how the Legislature might set state policy in statute by prioritizing presumptions of paternity (See discussion attached.) After researching the issue, the division concludes that prioritization of presumptions would not be appropriate without comprehensive evaluation as the ramifications are significant and the facts of each case vary widely. The division therefore recommends deletion of the above language to facilitate consensus on the bill.

Thank you for the opportunity to provide additional information. Please let me know if you would like the division to present additional testimony on this issue.

C: SRS Director Peter S. Blouke, PhD.
Senator Al Bishop, Sponsor
Senator Lorents Grosfield

DISCUSSION OF CONFLICTING PRESUMPTIONS OF PATERNITY

SB 36

Summary of Presumptions of Paternity

Presumptions currently existing in Montana law (40-6-105, MCA with the addition of the blood test presumption added by SB 36):

A man is presumed to be the natural father of the child under any of the following primary circumstances:

- 1) the man and the natural mother are or have been married (or have attempted to marry) and the child is born or conceived during the marriage (or attempted marriage), even if the marriage (or attempted marriage) has terminated through divorce, death, annulment, declaration of invalidity, etc.
- 2) the man holds himself out to be the child's natural father through his actions and admissions
- 3) the child's mother and alleged father have acknowledged the father's paternity in writing and filed the acknowledgement with the Dept. of Health or appropriate legal forum
- 4) blood testing shows a 95% or higher statistical probability of the man being the father of the child

DISCUSSION:

SB 36 amends 40-6-105(3) to provide "when two or more conflicting presumptions arise, a presumption based upon a blood test is sufficient to overcome the other presumptions." In other words, by amending SB 36 to add this sentence to 40-6-105(3), the Legislature is saying that the presumption of paternity from blood testing is always given priority over other existing presumptions. This will be a statutory policy determination that would apply in all cases between a presumption based on a paternity blood test and any of the other presumptions of paternity. Of course, all presumptions are still rebuttable in an appropriate action filed in district court.

The last sentence added to 40-6-105(3) by SB 36 provides "If there are conflicting presumptions not based on blood testing, the presumption that is factually founded on the weightier considerations of policy and logic controls." This is the section that the Committee was primarily concerned with.

This sentence is part of §4(b) of the Uniform Parentage Act of 1973. In the UPA the "conflicting provisions" language was part of a paragraph that included what is existing 40-6-105(2). The entire provision in the UPA reads,

A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

In 1975 Montana adopted only the first sentence of §4, and changed the standard of proof from "clear and convincing" to a "preponderance." At least 15 other states adopted the UPA from the mid-70's to the mid-80's and adopted some form of §4(b). These states include Alabama, California, Colorado, Delaware, Hawaii, Illinois, Kansas, Minnesota, Nevada, New Jersey, North Dakota, Ohio, Rhode Island, Washington and Wyoming. Other states including Arizona and Colorado have adopted similar "conflicting presumption" language.

Alabama words the sentence at issue as follows: "In the event two or more conflicting presumptions arise, that which is founded upon the weightier considerations of public policy and logic, as evidenced by the facts, shall control."

Arizona, California, Colorado, Delaware and Hawaii, Kansas, Minnesota, Nevada, New Jersey, North Dakota, Rhode Island, Washington and Wyoming's language is exactly as expressed in the UPA.

Ohio's code provides: "If two or more conflicting presumptions arise under this section, the court shall determine, based upon logic and policy considerations, which presumption controls."

Searching the annotations to these state codes, the CSED could find no cases discussing the phrase "weightier considerations of policy and logic". Cases concerning conflicting presumptions, most notably cases concerning a presumption based on marriage versus one based on another man holding the child out as his own, or one based on marriage versus a presumption based on a positive blood test of another man, have been determined on the individual facts of each case.

It is hard to draw out any consensus from the decisions of the states that would assist in ranking the conflicting presumptions in all cases. For example, in a case of a marriage presumption versus another man presumed to be the father based on a blood test presumption, when the child at issue had reached the age of 10, always believing the mother's husband to be her father and having a positive father-child relationship with this man, public policy might favor the presumption based on marriage. If the facts were changed, and the husband, although presumed to be father, had never had a relationship with the child, while the other man had, public policy might favor the presumption based on the blood test.

One of the most basic decisions to be made when trying to rank the

conflicting presumptions, (were you not going to leave it up to trier of fact), would be to decide whether fundamentally, public policy favors a biological tie. That is, whether the paternity determination should ultimately be made based on the answer to this most basic question - Who is the biological father? If public policy is to favor a biological tie, then the blood test presumption might rank first, and the CSED has proposed this when the two conflicting presumptions are one based on a blood test and one based on another presumption. If the Committee is not convinced that this is or should be the public policy of the state, then perhaps the second sentence of new subsection (3) of Section 7 of SB 36, amending 40-6-105, should be deleted.

Beyond this, when there are two conflicting presumptions, neither based on a paternity blood test, one might next think about the presumption based on marriage as higher ranking. But again, what if the parties were separated at the time of conception of the child, have never reconciled, the child has never known the mother's husband, but has a sporadic relationship with the man who has in the past claimed paternity and lived with the mother and child a number of years ago?

The facts of each case vary. If the Committee is not comfortable that the proposed language regarding conflicting presumptions of paternity adds anything of value to a court, then rather than trying to cover every possible fact situation in a statute in ranking the presumptions, the CSED would propose to delete this sentence also.

ADDENDUM:

Section 40-6-105, MCA, as proposed in SB 36 and with amendments to SB 36 adopted by the Senate Judiciary Committee 1/11/95. (Note: Amendments to bill passed by Senate Judiciary Committee on 1/12/95 are CAPITALIZED to facilitate reference)

"40-6-105. Presumption of paternity. (1) A man person is presumed to be the natural father of a child if any of the following occur:

(a) he the person and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, he the person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, he the person and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) he CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER HAVE ACKNOWLEDGED THE ALLEGED FATHER'S THE PERSON HAS ACKNOWLEDGED HIS PATERNITY of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with the department of health and environmental sciences or with the district court for the county where he the person resides or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office; ~~or~~

(ii) with his the person's consent, he the person is named as the child's father on the child's birth certificate; or

(iii) he the person is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he the person receives the child into his the person's home and openly ~~holds out~~ represents the child to be as his the person's natural child; ~~or~~

(e) he THE PERSON ACKNOWLEDGES THE CHILD'S MOTHER AND THE CHILD'S ALLEGED FATHER ACKNOWLEDGE THE ALLEGED FATHER'S HIS paternity of the child in a writing paternity acknowledgment form that is provided by the department of social and rehabilitation services and filed with the department of health and environmental sciences or with the district court of the county where he the person resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment

within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office. The department of health and environmental sciences or the district court shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of social and rehabilitation services shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity. If another man person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability of paternity.

(2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(2)(3) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence. When two or more conflicting presumptions arise, a presumption based upon a blood test is sufficient to overcome other presumptions. If there are conflicting presumptions not based on blood testing, the presumption that is factually founded on the weightier considerations of policy and logic controls.

(4) A presumption of paternity established under this section is a sufficient basis for establishing a support order."

Amendments to Senate Bill No. 36
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 13, 1995

1. Title, line 6.

Strike: "AND"

2. Title, line 8.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, line 13.

Strike: "presumption --"

4. Page 1, line 29 through page 2, line 2.

Strike: subsection (5) in its entirety

Renumber: subsequent subsections

5. Page 7, line 22.

Following: "he"

Strike: "the person has acknowledged"Insert: "the child's mother and the child's alleged father have
acknowledged the alleged father's"

6. Page 8, line 3.

Following: "he"

Strike: "the person acknowledges"Insert: "the child's mother and the child's alleged father
acknowledge the alleged father's"

7. Page 8, lines 22 through 25.

Following: "evidence." on line 22

Strike: remainder of lines 22 through line 25

8. Page 11, line 1.

Strike: "parentage"

Insert: "paternity"

9. Page 11, line 3.

Strike: "parentage"

Insert: "paternity"

10. Page 11, line 12.

Insert: "NEW SECTION. Section 12. Effective date. [This act] is
effective July 1, 1995."

HEARING ON SB 36Opening Statement by Sponsor:

SENATOR AL BISHOP, SD 9, presented SB 36 which was proposed by the Child Support Enforcement Division of the Department of Social and Rehabilitation Services (SRS). It has to do with the Omnibus Budget Reconciliation Act of 1993. Montana already has most of the law in place to meet the federal requirements. The bill is important to secure child support enforcement money to pay for dependent children. It deals with establishment of paternity.

Proponents' Testimony:

Mary Ann Wellbank, SRS, gave a brief overview of the content and necessity for the bill in establishing paternity in the process of collecting child support. She said it is a federally mandated piece of legislation and is good for Montana because it tightens up the process, gives everyone due process to object and allows the department to proceed with establishment of the child support order.

Kate Cholewa, Montana Women's Lobby, claimed the bill is good for the state budget because it helps the department and helps children.

Opponents' Testimony:

None

Informational Testimony:

EXHIBIT 6 was submitted by SRS as a supporting document.

Questions From Committee Members and Responses:

REP. SMITH asked for a definition of "alleged father."

Ms. Wellbank replied that it describes someone the mother alleges to be the father. It is defined in the law as "the man who is alleged to have engaged in sexual intercourse with the child's mother during a possible time of conception of the child; or man who is presumed to be the child's father."

REP. SMITH asked where the blood tests are taken.

Ms. Wellbank said the division contracts with Baltimore labs and they maintain blood testing sites throughout Montana.

REP. SMITH asked about the process of informing the alleged father of his need to respond.

Ms. Wellbank referred to section 4 on page 4 to address her question.

REP. TREXLER went to page 9, line 16 for clarification that there is no choice in ordering an additional blood test.

Ms. Wellbank said that was correct.

REP. TREXLER then referred to page 8, lines 18 and 19 and asked who the administrative agency is in this case.

Ms. Wellbank said there is an administrative law judge in their division.

REP. MOLNAR went to page 5, lines 1 and 2 to discuss the preclusion of justice by saying that it is illegal to request a rehearing if technology proves the tests to be wrong.

Ms. Wellbank said the blood testing comes back as 99% or greater probability.

Amy Pfeifer, SRS, confirmed the above response in relation to the current method of HLA testing. She said there may be some challenges in using DNA testing. With technology change, they might want to look at changing the statute.

REP. MOLNAR asked why it is being set in statute that a person cannot later challenge it if he believes he has a legitimate claim.

Ms. Pfeifer said that the lab performing the test must be accredited by the American Association of Blood Banks and only through such a lab can such a presumption of paternity be based. The specific language relating to this is a federal requirement.

REP. HURDLE commented on this provision as curtailing delays by contesting paternity.

REP. KOTTEL asked who pays the costs of blood tests and how much it costs.

Ms. Wellbank said it depends on the hearing officer. Generally the testing is 90% federally funded and 10% state funded. She said it is a total of about \$270.

REP. SMITH asked if there is a potential of using DNA testing exclusively for this.

Ms. Wellbank said her understanding is that it more expensive. Most are satisfied that the HLA results. In a few cases, they proceed to DNA.

Closing by Sponsor:

REP. BISHOP closed with a few remarks about the questions raised on the testing.

HEARING ON HB 311Opening Statement by Sponsor:

REP. HAL GRINDE, HD 94, quoted from the 5th Amendment of the U. S. Constitution and described the reasons for this bill when property rights are guaranteed by that document. He described a case known as Lucas v South Carolina supporting his statement that the bill is intended to protect the state of Montana. He said the basic premise is that if the government wants to take a property, it must pay for it. He said the bill doesn't affect cities or counties, but only state government. There are two kinds of property rights bills, one is "look before you leap" and the other is called "takings compensation." This bill is designed from the former category. He submitted amendments which would result in a reduction in the fiscal requirements.

EXHIBIT 7

CHAIRMAN CLARK limited testimony on both sides to 20 minutes.

{Tape: 3; Side: A}

Proponents' Testimony:

Leo Giacometto, Governor's Office, rose in support of the amended version of the bill. He presented written testimony prepared for Glenn Marx. EXHIBIT 8

Hertha Lund went through the proposed amendments and described their affect on the bill. EXHIBIT 9

Lorna Frank, Montana Farm Bureau, distributed a booklet relating to property rights legislation. EXHIBIT 10

David McClure, Montana Farm Bureau, supported the bill and described the reasons for that support.

Connie Cole, Pegasus Gold Corporation, offered their support of the bill.

Cliff Cox, Broadwater County Farm Bureau, described his support of the bill.

Joyce Baker, Judith Basin County Farm Bureau, shared the concern about government regulations affecting how people use their property. They support HB 311 because it asks government to look at regulations and assessment of impacts which may affect property rights and doesn't change takings law.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/31/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 1/31/95

BILL NO. SB 36

SPONSOR(S) Sen. Bishop

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppos
<u>M.A. Wellman</u>	<u>IRS-CSEIS</u>	☒	☐
<u>Kate Cholewa</u>	<u>MT Women's Lobby</u>	☒	☐

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENTS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

PATERNITY ESTABLISHMENT INFORMATION
CHILD SUPPORT ENFORCEMENT DIVISION
MARY ANN WELLBANK, ADMINISTRATOR
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Background on Genetic Testing

All human cells contain twenty three (23) pairs of chromosomes containing the genetic makeup of that person. A child inherits one-half of his/her chromosomes from each parent. The 23rd gene determines a person's sex, the 6th determines human leukocyte antigens (HLA), and the 9th determines blood type. The genetic lab does red blood cell (RBC) and HLA test systems on all blood samples to identify genetic markers from each person being tested. The lab compares these genetic markers to determine if the genetic markers from the child are a composite of those identified in the mother and the alleged father. The lab requires that more than one test system must be done to accomplish the testing, even though one system could be conclusive. HLA excludes 93.5% of all non-fathers and RBC excludes 63-72% of all non-fathers, and the two combined will exclude 99% on all non-fathers. DNA testing is done if the RBC and HLA do not reveal conclusive results. DNA is done by comparing short sections of DNA called a probe. The child's DNA probes are compared to that of the mother and the alleged father. If these two people are the biological parents of the child, exactly one-half of the child's DNA will exactly match with each of the parents. Two probe systems are run for absolute accuracy. DNA testing excludes 99% of all non-fathers.

The paternity index, shown on the test results, is set by comparing the genetic markers of the alleged father to a random man of the same race and calculating the ratio of the frequency that the random man could produce the same genetic markers. A probability factor of .05% assumes the alleged father and a random man had an equal chance to father the child and is used

in a formula to determine the final percentage of probability that the alleged father is the father of this child. If a blood test result shows a 2000 : 1 probability, the alleged father is 2000 times more likely to be the father of the child than a random man of the same race given access to the same mother.

PATERNITY GLOSSARY

Alleged Father	A man against whom there exists an assertion, declaration, or statement indicating that he may be the father of a child/ren in a case.
Acknowledgment of Paternity	A legal document signed and notarized by both parents of a child and filed with the birth records at the Bureau of Vital Statistics. This document may be challenged in the courts.
Admission of Paternity	An administrative document, signed, notarized, and sworn-to by the alleged father declaring that he is the father of the child named. This document cannot be challenged in the courts.
AFDC	Aid to Families with Dependent Children. Public assistance paid to a custodial party on behalf of children who are deprived of one or both of their parents by death, disability, or a continued absence from the home by a parent including desertion and incarceration.
Amended Birth Certificate	The document that results from adding the father's name to a birth certificate at the request of <u>either</u> parent.
Applicant	The custodial party who requests the services of CSED to determine paternity, establish an order for support, or enforcement of an order for support.
Assignment of Rights	The procedure/document by which a recipient of public assistance or an applicant of NAFDC services agrees to turn over to the State any right to support paid on behalf of such recipient/applicant or their dependent children.
Caretaker/ Custodial Party/ Guardian	A parent, relative, or guardian who maintains care and control of the dependent children of a NAFDC household or whose needs are included with the children's in an AFDC payment or Medicaid benefits.
Certificate of Service/ Sheriff's Return	A signed document by which the person who served process, delivered documents in person, upon a party to the case which affirms that the service was performed.
Certified Birth Record	A document obtained from the state agency responsible for maintaining vital statistics of birth and death records. The record contains birth information for the child, mother's name, and father's name if paternity has been acknowledged. The document bears the signature of an agency official and seal of certification as to the facts.

Certify	To declare, under oath, the accuracy of facts by a signed, written statement.
Child	Any person under 18 years of age who is not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States, any person under 19 years of age and still in high school or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday. [MCA 40-5-201 (2)(a)]
Circumstantial Evidence	Evidence directed to the surrounding events, whereby which existence of the principal fact in an issue may be inferred by logical reasoning.
Cite	A statute, ordinance, or judicial opinion identified by section, volume, or page numbers, and code of the source.
Code	A collection of federal or state laws published in one or more volumes.
Collateral Facts	Facts outside of or not directly connected with the principal matter in dispute.
Continuance	The postponement of a hearing to a different day.
Cooperation	An applicant's observance of the conditions of application or service by any State agency.
Cross-examination	The questioning of a witness by the opposing party for the purpose of testing the truth of the testimony.
CSED	<u>Child Support Enforcement Division</u>
Default	The failure of a party to a case to respond to legal process within the time-period prescribed by law for that response.
Dependent Child	Child under the age of emancipation or receiving assistance ia AFDC.
Discovery	The disclosure of facts, documents, witnesses or other information in the possession of one parties in an adversarial action to the other party prior to formal hearings procedures.
Due Process of Law	The observance of legal rules and procedures to protect the rights of all parties to a legal action.
Emancipation	To release from parental care and responsibility ia reaching the legal age of emancipation in a state, marriage, entry to military service, death, or by court order.
Et Al	Latin abbreviation for "and others".

Et Seq.	Latin abbreviation for "and the following".
Ex Parte	Something that is done for the benefit of one party only and improperly excluding others to the same action.
Exhibit	A document or article of fact, marked for identification, submitted to the court or to the hearings officer to support the argument of a party to a legal action.
(Title) I-A	of the Social Security Act covering public assistance programs under Federal Law.
(Title) I-D	of the Social Security Act covering support enforcement programs under Federal Law.
Grant Amount	The amount of public assistance paid to an AFDC family in a given month.
Guardian Ad Litem	A guardian appointed by a court to protect the legal interests of a minor or otherwise incapacitated person.
Hearings Officer Administrative Law Judge	An impartial person authorized by the agency to hear evidence and render decisions regarding proper application of policy and procedure.
Inadmissable	A term to describe evidence or testimony that cannot be considered by a judge or hearings officer under established legal procedures.
Incarceration	Imprisonment; not including County Jails.
Informational Birth Record	An uncertified document containing birth information for a child. Sometimes this is a document issued by the hospital "suitable for framing" and other times this is a copy of the documents submitted by the hospital to the Bureau of vital Statistics. This is not a legal document, but does provide valuable information regarding the birth records of a child.
Informed Consent	An administrative document signed by an alleged father by which he acknowledges that he is signing an Admission of Paternity fully aware of additional possible fathers.
Initiating State	The state in which the custodial party resides when the alleged father resides in another and interstate actions are required.
Interrogatories	A set or series of written questions to assist in discovery prior to a hearing.
Judgment	The official decision of findings of a court; a decree.

Judicial Review	Appeal to a court of higher authority for the review of the judgment of an administrative agency.
Jurisdiction	The determination by law prescribing the class of cases which may be heard by a legal entity including a specific geographical area and the parties which may be included in an action.
Legal Father	A man who is recognized by law as the parent of a child.
MCA	Montana Code Annotated, Montana laws. Title 40 and Title 41 specifically govern the actions of CSED and define its authority.
Medicaid	Medical benefits related to AFDC benefits or to NAFDC persons who are eligible.
Motion	An application to a judge or hearings officer for an order or ruling.
Non-AFDC/NAFDC	I-D cases in which the custodial party is not a recipient of public assistance.
Notarize	The administration of an oath to a person, a Notary Public, who then attests and certifies by his or her signature and official seal on the document that the person who signed the document was the person named on the document.
Objection	The act of a party who disagrees to something or proceeding in the course of a hearing.
Opening Statement	The statement made as an overview at the beginning of a hearing setting forth the purpose and the facts to be covered.
Order	The decision rendered in writing by the judge or hearings officer.
Paternity	Fatherhood.
Paternity Affidavit	An administrative document, completed by the custodial party, containing declarations and statements regarding the circumstances of conception and the relationship as it existed between the biological parents of the child. This document is completed voluntarily, signed and sworn-to before a notary.
Personal Service	Delivery of a notice of document to a named party to an action by handing it to him/her in person.
Precedent	An judgment or decision that serves as an example or authority for an identical or similar case or question of law.

Pre-hearing Conference

A telephone conference call including the Hearings office, the CSED, and the alleged father to inform the alleged father of his rights and the format of the hearing; to obtain a list of necessary witnesses; set deadlines for discovery and submitting of exhibits; and, to set a hearing date.

Probable/
Reasonable Cause

Facts exist which would induce a reasonable person to believe that an event did occur as alleged.

Pro Se

A person legal representation of his own interests in a hearing without benefit of a lawyer by his/her own choosing.

Presumed Father

A man who was married to the mother at the time the child was born or who meets criteria of presumption as defined under the law. MCA 40-6-105.

Publication/
Decree by Publication

Service has been accomplished by printing of the notification of a legal action in a local newspaper in the area of last known address of the alleged or presumed father. Does not establish paternity.

Rebut

New evidence can be introduced to contradict prior facts or evidence.

Recipient

The person receiving public assistance.

Redirect

The re-questioning of a witness.

Regulation

The rules of an administrative agency.

Release

The relinquishment of a right.

Relevance

A determination that evidence or testimony bears a direct relationship to an issue and proves a fact.

Reporter

A publication that contains judicial opinions.

- Responding State

The state in which the alleged father resides if different from that in which the custodial party lies in an interstate action.

Security Copy

A copy of a letter or official document retained in the case-file and stamped as a "copy". Such documents are used as exhibits in administrative hearings and in District Court by way of a Subpoena Duces Tecum.

Statutes

Formal written law found in code books.

Statute of Limitations

Under the law, sets the period of time within which a legal action can take place.

EXHIBIT 6
DATE 1-31-95
X SB 36

Stay	An order by the court to stop a legal proceeding.
Stipulation	An agreement between parties, done in writing, to validate agreement upon facts.
Subject Matter Jurisdiction	Jurisdiction to proceed with actions against a specific class of case. (example: Native Americans)
Subpoena	The legal process to order cooperation of a witness to appear.
Subpoena Duces Tecum	The legal process to order presentation of documents.
Substitute Birth	The document requested, by a submitting a Certificate Paternity Consent Order, when scientific evidence and/or an administrative or court order requires the information on the birth certificate be changed.
SYSTEM/SEARCHS	The CSED computerized record keeping system.
TEAMS	The computerized record keeping system used by the I-A/welfare agency.
Wavler	The intentional and voluntary relinquishment of a known legal right.

Motion: REP. ANDERSON MOVED HB 176 DO PASS AS AMENDED.

Discussion: REP. AUBYN CURTISS wanted to know how much impact it would have on the general revenue if it were made a county option since some counties had already developed their system.

REP. MC GEE said this would allow the general fund to place the money necessary to fund those counties which are not yet set up.

Vote: The motion carried 14 - 5, REPS. SMITH, WYATT, MC CULLOCH, MOLNAR and BOHARSKI voting no.

EXECUTIVE ACTION ON SB 36

Motion: REP. WYATT MOVED SB 36 BE CONCURRED IN.

Discussion: REP. MOLNAR suggested that there be mention of a timely objection on page 5 rather than their losing all rights to an objection later. If there is now a 95-99% accuracy rate but technology improved or other information came to light, they should not be barred from filing an objection.

Motion/Vote: REP. MOLNAR MOVED TO STRIKE ON LINE 1 FROM "IF THE ALLEGED" THROUGH "RESULTS." ON LINE 3.

Discussion: REP. BILL CAREY said that the response to that suggestion during the hearing was that the sentence is required by the federal government.

REP. MOLNAR said that he did not believe that anyone has a right to raise an objection to new evidence. He would hope they had misinterpreted something there.

REP. KOTTEL felt that it was necessary to limit the time to bring an objection and that if the objection was not brought within that time period, the paternity issue was settled. Otherwise, the alleged father could protest his paternity for the entire lifetime of the child and avoid responsibility.

REP. MOLNAR rebutted the argument with possible valid reasons for delays in filing objections.

REP. KOTTEL felt that the child should be protected from prolonged or disrupted settlement of paternity issues which would result in negative financial, emotional and psychological ramifications.

REP. MOLNAR said that all his amendment would allow is that if truth is not evident and somebody wants to set the record straight, they have the right to do so without the legislature telling them to be quiet.

REP. BOHARSKI presented a scenario in which an alleged father might at first respond as the father while under emotional or psychological or moral persuasions where that might not be the truth and wanted to know if this was what was being protected.

REP. MOLNAR said his amendment seeks to provide for advanced technology in using blood tests to prove a man's innocence and leaving the door open for that eventuality if he finds later that there is reason to believe that he is not the father.

REP. KOTTEL asked the committee to consider the statistical probability of the two tests for paternity concurring and yet the person not being the father. Those two tests are the blood matching in 95% accuracy with the blood of the child and also the timing of intercourse with the mother. If the man still protests that he is not the father, he has 20 days in which to file the objection.

REP. MC GEE did not feel 20 days was sufficient for the alleged father to react to this and particularly if he is not the father. To restrict him to the 20 days and bar him from coming back to the court he felt was wrong. He supported the amendment.

REP. SHEA asked if this was not just for someone denying paternity, how would it work for someone who wanted to be the father but the test showed he was not the father.

REP. MOLNAR recalled that if the mother says he is the father and he accepts that he is the father, that settles it, but this deals with contested cases.

Vote: The motion carried 12 - 7, RESP. WYATT, MC CULLOCH, CAREY, GRIMES, KOTTEL, HURDLE and SOFT voting no.

Motion/Vote: REP. CHRIS AHNER MOVED SB 36 BE CONCURRED IN AS AMENDED. The motion carried 18 - 1, REP. MC GEE voting no.

{Tape: 1; Side: B}

HEARING ON HB 253

Opening Statement by Sponsor:

REP. BEVERLY BARNHART, HD 29, said this bill would not mandate that judges send parents involved in a divorce to a course designed to help the children of divorce. It provides that a judge may send them to a divorce mediation course. She presented a letter from Judge Olson in support of the bill. EXHIBIT 2

Proponents' Testimony:

George Studor, presented his personal testimony and submitted it to the committee. EXHIBIT 3

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/2/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

February 3, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 36 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Grimes

And, that such amendments read:

1. Page 5, lines 1 through 3.

Strike: "If the" on line 1 through "results." on line 3

-END-


Committee Vote:

Yes 18, No 1.

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